

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

The Wild Hare, Ltd.)
d/b/a Ice Bar)
Jason Modzelewski, President)
Licensee/Suspension)
for the premises located at)
738 North Clark Street - 2nd Floor)
) Case No. 08 LA 03
v.)
)
Department of Business Affairs & Licensing)
Local Liquor Control Commission)
Scott V. Bruner, Director)
)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONERS KOPPEL AND SCHNORF

The City of Chicago's Local Liquor Control Commission filed an Amended Notice of Hearing on January 30, 2007, alleging five charges. The first charge alleged that on September 17, 2006, the licensee allowed the number of people in the establishment to exceed the occupancy limit certified by the buildings commissioner. Count 2 and 3 alleged that on February 14, 2005, the licensee knowingly made a false statement in the renewal application and failed to timely report a change in corporate structure. Counts 4 and 5 alleged that on August 1, 2004, the licensee failed to timely notify the City of a change in officers and failed to notify the Illinois Liquor Control Commission of a change in officers within 30 days of such change. The case was assigned to Deputy Hearing Commissioner Raymond J. Prosser who held hearings on September 20, 2007, November 29, 2007, and December 13, 2007. He prepared Findings of Fact stating that the City sustained its burden of proof on all charges and Director Scott V.

Burner adopted these findings. On January 2, 2008, a fourteen (14) day suspension was issued. A timely notice of appeal of that suspension was filed on January 22, 2008. Oral argument was made before the License Appeal Commission on May 13, 2008, and the matter was taken under advisement.

In cases of revocation or suspension, this Commission's review is limited to these three questions:

- (A) Whether the Local Liquor Control Commissioner has proceeded in the manner provided by law;
- (B) Whether the order is supported by the findings;
- (C) Whether the findings are supported by substantial evidence in light of the whole record.

With respect to question (A) the licensee made argument in the form of a motion that the Local Liquor Control Commission lacked jurisdiction to hear Charge 1. Charge 1 alleged that the number of persons in the establishment on September 17, 2006, exceeded the occupancy limit certified by the buildings commissioner. This violated Title 13, Chapter 36, Section 020 of the Municipal Code of Chicago. Licensee argued that the code calls for a fine for a violation of this ordinance and the proper forum was the Department of Administrative Hearings.

Section 4-4-280 of the Municipal Code states in pertinent part that the Mayor has the power to fine a licensee and to suspend or revoke any license issued for good and sufficient cause if he determines the licensee shall have violated any of the provisions of this code or any of the statutes of this state. Case law has construed the application of this provision of the Code

to be limited to violations of statutes, ordinances or regulations that are fairly related to the control of liquor. Askew v. Daley 62 Ill.App.3d 370.

After the disaster arising from overcrowding at the E2 nightclub, it is difficult to imagine that anyone could argue that the public need to be safe from overcrowding in a premise with a tavern license is not related to the reasonable control of liquor. That is especially true in this case since the licensed premises were on the second floor.

The Local Liquor Control Commissioner did proceed in a manner provided by law in allowing Charge 1 to be prosecuted at the Local Liquor Control Commission.

The findings in this case on all five charges are supported by substantial evidence in light of the whole record. The testimony of Lieutenant Tebbens at a count of 215 patrons in a premise with an occupancy of 99 was credible and uncontradicted. The testimony of Jason Modzelewski was also credible and comported with the testimony of Anne Marie Amato. There was a change of officers and corporate structure that was not timely reported to the City of Chicago's Department of Revenue or to the Illinois Liquor Control Commission.

The final issue is whether the findings of a 14 day suspension for these violations is supported by the findings. The Deputy Hearing Commissioner and the then Director stated they relied on the facts of this case and the prior history to arrive at the fourteen day suspension. While this Commissioner might have opted for a lesser suspension this fourteen day suspension

is not so arbitrary or capricious or unreasonable so as to require its reversal. The decision of the Local Liquor Control Commission of a fourteen (14) day suspension is upheld.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of the appellant for FOURTEEN (14) days is AFFIRMED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court the Petition for Rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: September 16, 2008

Dennis M. Fleming
Chairman

Irving J. Koppel
Member

Stephen B. Schnorf
Member